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SENATE BILL 245

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Ramsay L. Gorham

AN ACT

RELATING TO ELECTIONS; ALLOWING RECOUNTS FOR ELECTIONS IN WHICH  
THERE ARE NO CANDIDATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-14-14 NMSA 1978 (being Laws 1969,  
Chapter 240, Section 343, as amended) is amended to read:

"1-14-14. RECOUNTS--RECHECKS--APPLICATION. --

A. Whenever any candidate for any office for which  
the state canvassing board or county canvassing board issues a  
certificate of nomination or election believes that any error  
or fraud has been committed by any precinct board in counting  
or tallying the emergency paper ballots, provisional paper  
ballots or absentee ballots, in the verification of the votes  
cast on the voting machines or in the certifying of the results  
of any election whereby the results of the election in the

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1 precinct have not been correctly determined, declared or  
2 certified, the candidate, within six days after completion of  
3 the canvass by the proper canvassing board, may have a recount  
4 of the emergency paper ballots, provisional paper ballots or  
5 absentee ballots, or a recheck of the votes shown on the voting  
6 machines, that were cast in the precinct.

7 B. The county canvassing board shall recount the  
8 emergency paper ballots, provisional paper ballots or absentee  
9 ballots, or recheck the votes recorded on the voting machines,  
10 if, within six days of completion of the county canvass, the  
11 district court of the county receives a written petition from  
12 at least twenty-five voters of the county requesting a recount  
13 or recheck of the results in an election on a ballot question.

14 [~~B.-~~] C. In the case of any office for which the  
15 state canvassing board issues a certificate of nomination or  
16 election, application for recount or recheck shall be filed  
17 with the secretary of state.

18 [~~C.-~~] D. In the case of any office for which the  
19 county canvassing board issues a certificate of nomination or  
20 election, application for recount or recheck shall be filed  
21 with the district judge for the county in which the applicant  
22 resides.

23 E. In the case of an election on a ballot question,  
24 the petition for recount or recheck shall be filed with the  
25 district judge for the county in which the petitioners reside."

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1           Section 2.   Section 1-14-17 NMSA 1978 (being Laws 1969,  
2 Chapter 240, Section 346, as amended) is amended to read:

3           "1-14-17.   RECOUNT AND RECHECK PROCEEDINGS--COUNTY. --

4           A.   Immediately upon filing of the application or  
5 petition for recount or recheck, the district judge shall by  
6 order fix the place and date of the recount or recheck, which  
7 date shall not be more than ten days after the filing of the  
8 application or petition.   Such order of the district judge  
9 shall direct the county clerk to issue a summons to the  
10 precinct board of the precinct complained of.   It shall command  
11 them to attend at the time and place specified therein and to  
12 make such recount or recheck.

13           B.   The summons shall be forthwith personally served  
14 by the sheriff upon each precinct board member.

15           C.   The county clerk shall notify the county  
16 chairman of each political party that participated in the  
17 election in that precinct of the date and place fixed for the  
18 recount or recheck.   The notice shall be by registered mail.

19           D.   The precinct board, district judge and county  
20 clerk shall meet at the county courthouse at 10:00 a.m. on the  
21 date set.

22           E.   The ballot boxes or voting machines of the  
23 precincts involved in the recount or recheck shall be unlocked,  
24 and the precinct board shall recount and retally the emergency  
25 paper ballots, provisional paper ballots and absentee ballots,

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1 or recheck the votes cast on the voting machine, for the office  
2 in question or the ballot question in the presence of the  
3 district judge, or person designated to act for him, the county  
4 clerk and any other person who desires to be present.

5 F. At the recount, the precinct board of a precinct  
6 using emergency paper ballots, provisional paper ballots or  
7 absentee ballots shall recount and retally only the ballots  
8 [~~which~~] that the presiding judge accepted and placed in the  
9 ballot box as legal ballots at the time they were cast.

10 G. After completion of the recount or recheck, the  
11 emergency paper ballots, provisional paper ballots or absentee  
12 ballots shall be placed in the ballot box and locked, or the  
13 voting machines shall be locked and resealed, and the precinct  
14 board shall certify to the county canvassing board the results  
15 of the recount or recheck. The district judge and county clerk  
16 shall certify that such recount or recheck was made in their  
17 presence. "

18 Section 3. Section 1-14-18 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 347, as amended) is amended to read:

20 "1-14-18. RECOUNT--RECHECK--RECANVASS BY CANVASSING  
21 BOARDS.--

22 A. Immediately upon receipt of the certificate of  
23 recount or recheck from all the precinct boards making a  
24 recount or recheck, the proper canvassing board shall meet and  
25 recanvass the returns for the office in question or the ballot

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1 question.

2 B. In making the canvass, the proper canvassing  
3 board shall be bound by the certificates of recount or recheck  
4 from the precinct boards instead of the original returns from  
5 those precinct boards.

6 C. After the canvass, if it appears that fraud or  
7 error has been committed sufficient to change the winner of the  
8 election, then the proper canvassing board shall revoke the  
9 certificate of nomination or election already issued to any  
10 person for that office and shall issue a certificate of  
11 nomination or election in favor of the person receiving a  
12 plurality of the votes cast at the election as shown by the  
13 recount or recheck, and such certificate shall supersede all  
14 others and entitle the holder to the same rights and  
15 [~~privileges~~] privileges as if such certificate had been  
16 originally issued by the canvassing board.

17 D. After the canvass, if it appears that fraud or  
18 error has been committed sufficient to change the results of  
19 the election in the case of a ballot question, then the state  
20 canvassing board shall revoke the declaration already issued on  
21 that ballot question and declare the results of the election as  
22 shown by the recount or recheck, and the declaration of results  
23 shall supersede all others as if the declaration has been  
24 originally issued by the canvassing board."

25 Section 4. EFFECTIVE DATE. --The effective date of the

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1 provisions of this act is July 1, 2004.

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